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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/829,557
Filing Date: April 22, 2004
Appellant(s): KNOTT ET AL.

Joseph P. Lally
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 19, 2009 appealing from the Office

action mailed November 24, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0089150 A1	Birkhead et al.	4-2005
2002/0091566 A1	Siegel	7-2002

6,510,411 B1	Norton et al.	1-2003
2001/0014146 A1	Beyda et al.	8-2001
2002/0055351 A1	Elsey et al.	5-2002
2001/0025309 A1	Macleod Beck et al.	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-5, 8, 13, 19, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkhead (US Patent Application Publication No. 2005/0089150 A1), and further in view of Siegel (US Patent Application No. 2002/0091566 A1).

Regarding claim 1, Birkhead teaches of a method of providing a verbal dialog interface for a caller to an automated self-service "how to use" (HTU) call system, comprising the steps of:

grouping services *or* products other than the HTU call system into categories (Paragraphs 0043-0044 and elsewhere in the art, grouping drugs and other medical services as per user profile, also obvious to group drugs as one category and medical services as another category);

associating *one or* more HTU topics with each service *or* product (Paragraphs 0044-0056 and elsewhere in the art, associating multiple topics to each drug i.e. how to use due to side effects or adverse reaction; it would be obvious for the medical information topic to be operating instructions related to a medical service or device);

storing at least *one* HTU dialog module for each HTU topic, such that the dialog module can be played as a voice message of HTU instructions to the caller, wherein HTU instructions are operating instructions for the service *or* product associated with HTU topic corresponding to the HTU dialog module (Paragraphs 0044-0056 and elsewhere in the art, playing drug topics to determine how to use the specific drug; it would be obvious for the medical information topic to be operating instructions related to a medical service or device);

wherein some topics have two *or* more dialog modules to be played as a set, different topics having different numbers of dialog modules (Fig. 2 item 210; Paragraphs 0044-0056);

during a call from a caller, prompting the caller to name *or* describe a service *or* product (Paragraphs 0043-0044, 0059-0060 and elsewhere in the art, presenting dynamic prompts to the user), and receiving a response from the caller (Paragraphs 0044, 0059-0061 and elsewhere in the art, user selecting to query for any drug or medical information);

in response to the prompting step, recognizing the caller's response such that unsupported services *or* products are recognized and an appropriate message is played (paragraphs 0091-0093);

based on *one or* more of the caller's responses, recognizing the caller's selected service *or* product (Paragraph 0044 and elsewhere in the art, user selected drug or medical information);

providing the caller with a list of topics associated with the selected service *or*

product and recognizing the caller's selected topic (Paragraphs 0044-0056 and

elsewhere in the art, user selecting the topic related to the selected drug to listen to);

playing to the caller the HTU instructions in the at least *one* HTU dialog module

stored for the selected topic, such that if the selected topic has two *or* more associated

dialog module to be played as a set, the caller may request to have the HTU

instructions in any selected HTU dialog module in the set repeated (Fig. 2 items 210,

220 returning to item 210 for reprompt and replay the information dialog) (Figs. 3-7 and

their descriptions).

Birkhead teaches of providing a list of drug and medical information but does not

teach of prompting the caller to ask for a list of services or products; providing a spoken

list of categories and receiving the caller response in response to the caller asking for a

list of service or products; and determining the need for disambiguation and

disambiguating the response of category having more than one or more service or

product by providing the list of services or products within the category, prompting for

and receiving the caller response.

However, in the same field of communication, Siegel teaches of providing a list of

category of services or products (based on departments), receiving the caller response

and providing another category based on the caller selection of category (i.e. cheeses,

milks, eggs based on selection dairy as category since it has more than one selection

requiring disambiguation) and prompting for the caller response; the caller indicating the

selection at the prompt and providing a product list to the caller (consumer) for the

products within the department for the caller to select (Fig. 6, Paragraphs 0059-0061).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify Birkhead to provide and ask for the selection of category

and to provide the product information based on the category selection by the caller

according to hierarchy as taught by Siegel in order to "provide the consumer with

telephone access to the promotion database through an interactive voice response

system" and "to provide the consumer with promotion choices from a correlated product

category associated with a particular group of products in which the consumer is

interested in buying" (Siegel, Paragraphs 0019-0020).

Regarding claim 2, Birkhead teaches of a method of providing a verbal dialog

interface for a caller to an automated self-service "how to use" (HTU) call system,

comprising the steps of:

grouping services *or* products other than the HTU call system into categories

(Paragraphs 0043-0044 and elsewhere in the art, grouping drugs and other medical

services as per user profile, also obvious to group drugs as one category and medical

services as another category);

associating *one or* more HTU topics with each service *or* product (Paragraphs

0044-0056 and elsewhere in the art, associating multiple topics to each drug i.e. how to

use due to side effects or adverse reaction; it would be obvious for the medical

information topic to be operating instructions related to a medical service or device);

storing at least *one* HTU dialog module for each topic, such that the dialog

module can be played as a voice message of HTU instructions to the caller, wherein

HTU instructions are operating instructions for the corresponding services *or* products

(Paragraphs 0044-0056 and elsewhere in the art, playing drug topics to determine how

to use the specific drug; it would be obvious for the medical information topic to be

operating instructions related to a medical service or device);

wherein some topics have more two *or* more dialog modules to be played as a

set, different topics having different numbers of dialog modules (Fig. 2 item 210;

Paragraphs 0044-0056)

during a call from a caller, prompting the caller to select a service *or* product for

which the caller desires HTU instructions (Paragraphs 0043-0044, 0059-0060 and

elsewhere in the art, presenting dynamic prompts to the user), and receiving one *or*

more service or product responses from the caller (Paragraphs 0044, 0059-0061 and

elsewhere in the art, user selecting to query for any drug or medical information);

based on *one or* more of the caller's responses, recognizing the caller's selected

service *or* product (Paragraph 0044 and elsewhere in the art, user selected drug or

medical information);

providing the caller with a list of topics associated with the selected service *or*

product and recognizing the caller's selected topic (Paragraphs 0044-0056 and

elsewhere in the art, user selecting the topic related to the selected drug to listen to);

playing to the caller the HTU instructions in the at least *one* HTU dialog module

stored for the selected topic, such that if the selected topic has two *or* more associated

dialog module to be played as a set, the caller may request to have the HTU

instructions in any selected HTU dialog module in the set repeated (Fig. 2 items 210,

220 returning to item 210 for reprompt and replay the information dialog) (Figs. 3-7 and

their descriptions).

Regarding claim 3, Birkhead teaches of the user manually providing caller ID as

identification at the prompt (Paragrpah 0058).

Regarding claim 4, Birkhead teaches of the dialog interface for a telephone call

system (Fig. 1 and its description).

Regarding claim 5, Birkhead teaches of at least one response from the caller

analyzed using natural language speech recognition techniques (Paragraphs 0025-

0032 and elsewhere in the art).

Regarding claim 8, Birkhead teaches of reprompting if the user response does

not match with the input recognition set (paragraphs 0091-0093).

Regarding claim 21, Siegel teaches of providing a list of category of services or

products (based on departments), identifying the caller response to be category (list of

services/products) (i.e. caller speaking the prompted category from the list instead of

specific sub-department or specific product) and listing the products within the selected

category; and disambiguating the identified response (i.e. dairy) by providing a list of

services or products within the particular category and prompting the caller for a

selection (Paragrpah 0059).

Regarding claim 13, Birkhead teaches of a system of providing a verbal dialog interface for a caller to an automated self-service "how to use" (HTU) call system (Fig. 1, Paragraphs 0024-0042), comprising:

a Get Service Name module configured to prompt the caller to name **or** describe a service **or** product other than the HTU call system (Paragraphs 0043-0044, 0059-0060 and elsewhere in the art, presenting dynamic prompts to the user), and for recognizing the caller's response (Paragraphs 0044, 0059-0061 and elsewhere in the art, user selecting to query for any drug or medical information);

a Get Information module configured to provide the caller with a list of topics associated with a selected service **or** product, and to recognize the caller's selected topic (Paragraphs 0044-0056 and elsewhere in the art, user selecting the topic related to the selected drug to listen to);

Information modules for providing the caller with verbal HTU instructions associated with the selected topic, the HTU instructions including instructions for using the selected service **or** product (Paragraphs 0044-0056 and elsewhere in the art, user selecting the topic related to the selected drug to listen to);

wherein at least one topic has more than one associated Information module, different topics having different numbers of Information modules (Fig. 2 item 210; Paragraphs 0044-0056).

Birkhead teaches of providing a list of drug and medical information and also teaches of distributed system (i.e. modularized system) but does not teach of prompting the caller to ask for a list of services or products; and a module configured to provide

the caller with a list of service *or* product categories, to receive a selection from the

caller, and to recognize the caller's selection from the list of categories.

However, in the same field of communication, Siegel teaches of a system

providing a list of category of services or products (based on departments), asking for

(prompting) and receiving the caller response and providing another category based on

the recognition of caller selection of category (i.e. cheeses, milks, eggs based on

selection dairy as category) and prompting for the further caller response; the caller

indicating the selection at the prompt and in response to this selection, providing a

product list to the caller (consumer) for the products within the department for the caller

to select (Figs. 1, 6 and their corresponding descriptions).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify Birkhead system to provide and ask for the selection of

category and to provide the product information based on the category selection by the

caller according to hierarchy as taught by Siegel in order to "provide the consumer with

telephone access to the promotion database through an interactive voice response

system" and "to provide the consumer with promotion choices from a correlated product

category associated with a particular group of products in which the consumer is

interested in buying" (Siegel, Paragraphs 0019-0020).

Regarding claim 19, refer to rejection for claim 13 and claim 8.

Regarding claim 22, Siegel teaches the method, further comprising:

a disambiguation decision module configured to identify whether the caller has

selected a particular category having more than one associated service or product

(selecting dairy department with multiple categories of cheeses, milk, eggs etc.);

a disambiguation process for providing a list of services or products, and for

recognizing the caller's spoken selection from the list (presenting the list of these items

for the caller to select) (Paragraph 0059).

Claims 6, 7, 12, 15-17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Birkhead and Siegel as applied to claims 2, 13, 21 above, and further

in view of Norton (US Patent No. 6,510,411 B1).

Regarding claim 6, Birkhead and Siegel do not teach of using timeout process.

However, in the same field of communication, Norton teaches of using timeout

for response and reprompting (col. 34, ll. 7-12, not replied within some preset amount of

time).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify Birkhead and Siegel to using timeout for response and

reprompting as taught by Norton in order to give another chance for providing input by

the caller who is slow in responding.

Regarding claim 7, Norton teaches of retry for response and reprompting (col.

34, ll. 7-12, reissue the current prompt).

Regarding claim 12, Norton teaches of having 'help' prompt and recognizing 'help' response for each task or subtask i.e. category or topic and providing corresponding information (col. 20, ll. 12-13, col. 10, ll. 58-67; col. 14, ll. 1-8).

Regarding claim 15, refer to rejection for claim 13 and claim 6.

Regarding claim 16, refer to rejection for claim 13 and claim 7.

Regarding claim 17, refer to rejection for claim 13 and claim 12.

Claims 9, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkhead and Siegel as applied to claims 2, 13 above, and further in view of Beyda (US Patent Application Publication No. 2001/0014146 A1).

Regarding claim 9, Birkhead does not teach of listing topics in order of frequency.

However, in the same field of endeavor, Beyda teaches of keeping track of selection of menu offerings by recording its usage (paragraphs 0028, 0050-0052).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Birkhead to include keeping the record of prompt selection according to responses as taught by Beyda so that "user's menu commands are provided in an updated order according to the frequency of use" (Beyda, Paragraph 0028).

Regarding claim 18, refer to rejection for claim 13 and claim 9.

Claims 10, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkhead and Siegel as applied to claims 2, 13 above, and further in view of Elsey (US Patent Application Publication No. 2002/0055351 A1).

Regarding claim 10, Birkhead does not teach of providing pricing information.

However, in the same field of endeavor, Elsey teaches of a system storing and providing pricing information, which varies with time (paragraph 0038) and further determines caller's phone number stored in the CID data (Paragraph 0076).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Birkhead to include providing pricing information and also determine storage of caller's phone number as taught by Elsey in order to enable the caller to make informed decision about the purchase and also to get a return call at a place where the call will be available.

Regarding claim 20, refer to rejection for claim 13 and claim 10.

Claims 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkhead and Siegel as applied to claims 2, 13 above, and further in view of Macleod Beck (US Patent Application Publication No. 2001/0025309 A1).

Regarding claim 11, Birkhead does not teach of taking a survey.

However, in the same field of endeavor, Macleod Beck teaches of taking client survey (paragraph 0114).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Birkhead to include taking a client survey as taught by

Macleod Beck in order to compile the historical service usage data for future targeted

marketing.

>*Regarding claim 14,* refer to rejection for claim 13 and claim 11.

(10) Response to Argument

**A. Rejection of Claims 1-5, 8, 13, 19, and 21-22 under 35 U.S.C. §103(a) as
unpatentable over Birkhead in view of Siegel**

Claim 1, the Appellant has quoted Federal Circuit opinion that "claim terms are

given their ordinary and customary meaning, which is the meaning the claim terms

would have to a person of ordinary skill in the art at the time of the invention", and

"dictionaries may be used in claim construction if it is helpful in determining the true

meaning of language used in patent claims". As such, the Appellant has reproduced

Merriam Webster definition of "instructions" defined as "an outline or manual of

technical procedure", and argued that "*Birkhead* does not disclose an outline or manual

of technical procedure. Disclosing the "effect of an operation" is distinguishable from

disclosing "an outline or manual of technical procedure." (Remarks, pg. 6 bottom

paragraph-pg. 7 top paragraph). The Examiner respectfully disagrees and points out

The American Heritage College Dictionary, 4th edition, 2004, ISBN 0-618-45300-8, pg.

719, which provides the definition of "instructions" as "**b. instructions** Detailed

directions on procedure". It does not require it to be "manual of technical" procedure.

The "effect of an operation" of a drug including its "adverse reaction" instructions and

"side effects" instructions (Birkhead, Paragraphs 0048-0049) are clearly operating

(administering) instructions on "how to use" the drug (product).

Regarding the Appellant argument of Examiner's purportedly unsupported

assertion of Birkhead including dosage for administering (operating) a particular drug

(product) (Remarks, pg. 7 paragraph 2), the Examiner would like to point out Birkhead

paragraph 0010 where it clearly teaches "information that would be critical to decisions

for prescribing drugs or medications to people". Also, it is common knowledge that any

drug either prescribed or over-the-counter includes dosage information. This is

administering (operating) instructions for "how to use" the drug (product).

Further, the Appellant has argued about recognizing unsupported products or

services (Remarks, pg. 7 bottom paragraph-pg. 9 paragraph 2) and has stated that

"Applicant respectfully submits that to recognize an unsupported service or product, as

claimed, would require a successful match with *Birkhead's* input recognition set."

(Remarks, pg. 8 paragraph 2). The Examiner respectfully disagrees. The claim does not

recite different steps to recognize the input as any input of service or product and then

recognize it as supported or unsupported service or product. As explained in the Office

Action (11/24/2008, paragraph 4 on pg. 4), "Birkhead clearly teaches that "In the case of

an unsuccessful match between the response of the user and the input recognition set"

i.e. the user input (caller's response) is recognized as having no match with recognized

product (unsupported product is recognized), "the system 120 will typically reprompt the

user" (play the appropriate message) (Birkhead, Paragraph 0093).". As it was well

known in the art, Input recognition sets include user inputs supported by the system to

filter out unsupported inputs, and in case of Birkhead these inputs are drugs or any

other medical services supported by the system. Thus, any user input not matching with

recognition set is unsupported. Using Appellant's own example of "*discount packages*"

(Remarks, pg. 8 paragraph 2), it will not be understood by the Birkhead system as any

supported drug (product) since it is expecting a supported drug name listed in input

recognition set, and hence the system will "reprompt the user if the user was

not....understood" (appropriate message) (Birkhead, Paragraph 0093).

   Claim 2, the Appellant has referred to arguments for "operating instructions" for

claim 1 (Remarks, pg. 9 bottom paragraph-pg. 10 top paragraph). As such above

discussion with respect to claim 1 applies here to claim 2.

   Claim 4, the Appellant has argued that claim recites "wherein the dialog interface

is for a telephone call system.", and "*Birkhead's* dialog interface is for a drug and

medical information system, not a telephone call system." (Remarks, pg. 10, paragraph

2). The Examiner respectfully disagrees. The dialog interface including 'DTMF or

Natural Speech" and "Synthesized or prerecorded audio" is for telephone call system

120 (Birkhead, Fig. 1). The Appellant has further referred to arguments for claim 1. As

such above discussion with respect to claim 1 applies here to claim 4.

   Claim 8, the Appellant has referred to arguments for recognizing unsupported

product or service in claim 1 (Remarks, pg. 10 paragraph 3-pg. 11 top paragraph). As

such above discussion with respect to claim 1 applies here to claim 8.

   Claim 13, for recitation "HTU instructions including instructions for using the

selected service or product" in this claim, the Appellant has referred to arguments for

claim 1 (Remarks, pg. 11, paragraph 2). As such above discussion with respect to claim 1 applies here to claim 13.

Claim 19, the Appellant has argued that "The Office Action's rejections of claim 13 and claim 8 do not establish a prima facie case of obviousness regarding claim 19 for at least the reason that they do no include any reference in the prior art to any Unsupported Service module, and do not include any discussion of any <u>unsupported service</u>. No combination of *Birkhead* and the other references discloses recognizing whether the caller has requested an <u>unsupported service</u>." (Remarks, pg. 11 paragraph 3). The Examiner respectfully disagrees. As indicated in claim 8 rejection, to which this claim rejection refers to, Birkhead clearly teaches recognition engine (module) to determine unsupported service or product (Birkhead, paragraphs 0091-0093). Above discussion with respect to claim 13 and claim 8 apply here for claim 19.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hemant Patel/

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